

HB0464S01 compared with HB0464

~~deleted text~~ shows text that was in HB0464 but was deleted in HB0464S01.

inserted text shows text that was not in HB0464 but was inserted into HB0464S01.

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Representative Ken Ivory proposes the following substitute bill:

SCHOOL MATERIALS AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions regarding student access to pornographic or indecent materials within the public education system.

Highlighted Provisions:

This bill:

- ▶ requires local education agencies (LEAs) to:
 - engage in certain review processes when a parent communicates an allegation that an instructional material is prohibited by state law; and
 - publicly vote on and explain a determination to reinstate or preserve student access to challenged instructional material;
- ▶ establishes the precedential effect of LEA and state board determinations;
- ▶ requires the State Board of Education (state board) to:

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- review LEA determinations regarding certain sensitive material; and
- make rules, including to establish an age-appropriateness rating system for instructional materials;

~~{ → establishes a private right of action for judicial review of LEA and state board determinations regarding challenged instructional material;~~

- ‡
- ▶ amends a state board reporting requirement; and
 - ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

53G-10-103, as enacted by Laws of Utah 2022, Chapter 377

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53G-10-103** is amended to read:

53G-10-103. Sensitive instructional materials.

(1) As used in this section:

(a) (i) "Instructional material" means a material, regardless of format, used:

(A) as or in place of textbooks to deliver curriculum within the state curriculum framework for courses of study by students; or

(B) to support a student's learning in [~~the~~] any school setting.

(ii) "Instructional material" includes reading materials, handouts, videos, digital materials, websites, online applications, and live presentations.

(b) "LEA governing board" means:

(i) for a school district, the local school board;

(ii) for a charter school, the charter school governing board; or

(iii) for the Utah Schools for the Deaf and the Blind, the state board.

(c) "Material" means the same as that term is defined in Section 76-10-1201.

(d) "Minor" means any person less than 18 years old.

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(e) "Public school" means:

- (i) a district school;
- (ii) a charter school; or
- (iii) the Utah Schools for the Deaf and the Blind.

(f) (i) "School setting" means, for a public school:

- (A) in a classroom;
- (B) in a school library; or
- (C) on school property.

(ii) "School setting" includes the following activities that an organization or individual or organization outside of a public school conducts, if a public school or an LEA sponsors or requires the activity:

- (A) an assembly;
- (B) a guest lecture;
- (C) a live presentation; or
- (D) an event.

(g) (i) "Sensitive material" means an instructional material that is educationally unsuitable because it is pornographic or indecent material as that term is defined in Section 76-10-1235, and is therefore deemed pervasively vulgar.

(ii) "Sensitive material" does not include an instructional material:

- (A) that an LEA selects under Section 53G-10-402;
- (B) for a concurrent enrollment course ~~for which the provider of the material and the LEA have a reasonable belief~~ that ~~the material does not contain~~ contains sensitive material and for which a parent receives notice from the course provider of the material and gives the parent's consent;

- ~~(B)~~ (C) for medical courses;
- ~~(C)~~ (D) for family and consumer science courses; or
- ~~(D)~~ (E) for another course the state board exempts in state board rule.

(2) (a) Sensitive materials are prohibited in the school setting.

(b) A public school may not:

(i) adopt, use, distribute, provide a student access to, or maintain in the school setting, sensitive materials; or

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(ii) permit a speaker or presenter in the school setting to display or distribute sensitive materials.

(3) An LEA shall:

(a) upon receipt of a notice from a teacher, LEA employee, student who is enrolled in the LEA, or a parent of a school-age child who resides within the boundaries of the LEA that an instructional material constitutes sensitive material:

(i) for a challenge under this section

using the standards described in Subsection 76-10-1227(2)(c), immediately remove the material from the library, classroom, or other location where students may access the material until the LEA completes the LEA's review;

(ii) review the allegations and the relevant material;

(iii) (A) if the LEA determines that the material does not constitute sensitive material under Subsection 76-10-1227(2)(c) and seeks to preserve student access to the material, make a written and publicly accessible determination, in accordance with a public vote of the local governing board, regarding the LEA's determination, including the LEA's reasoning and an explanation of why the material does not violate Subsection 76-10-1227(2)(c), is age appropriate, and has serious scientific, artistic, or literary value; and

(B) if the LEA determines that the material constitutes sensitive material using the standards described in Subsection 76-10-1227(2)(c), refer the material to the state board for review under Subsection (4), including each excerpt that the LEA determines violated Subsection 76-10-1227(2)(c) with the reference to or location of the excerpt; and

(iv) notify the individual who challenged the material regarding the outcome of the review, including any referral to the state board in accordance with this section;

(b) except for a challenge under this section using the review and make the determination standards described in Subsection (3)(a) no later than 120 days after the day on which the LEA receives the notice triggering the LEA's review; and

(c) 76-10-1227(2)(c), include parents who are reflective of the members of the school's community when [determining if an instructional material is sensitive material.] making the determinations described in Subsection (3)(a).

(4) Upon receipt of; and

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(c) refer to the state board any material for which the LEA has a documented record of having removed the material using the standards described in Subsection 76-10-1227(2)(c).

(4) (a) No later than 75 days after the day on which the state board receives an LEA's determination that an instructional material constitutes sensitive material under this section using the standards described in ~~Section~~ Subsection 76-10-1227 ~~for a description or depiction of illicit sex or immorality~~ (2)(c), the state board shall:

(~~fa~~)i) review the ~~relevant material~~ LEA's determination; and

(~~fb~~)ii) (~~fi~~)A) if the state board ratifies the LEA's determination, notify all LEAs to remove the sensitive material from student access; or

(~~fi~~)B) if the state board does not ratify the LEA's determination, make a written and publicly accessible determination, in accordance with a public vote of the state board, as to why the material does not constitute sensitive material under this section, including the state board's reasoning.

(b) Notwithstanding the state board having not ratified an LEA's determination under Subsection 76-10-1227(2)(c), the LEA's determination that the material constitutes sensitive material under Section 76-10-1235 shall remain unaffected by the state board's determination.

(5) ~~fa~~) Notwithstanding Subsection (3), an LEA may choose to not engage in a review of an instructional material against which the same individual has triggered three reviews under Subsection (3) during the present ~~or preceding~~ school year for material that the LEA determined, through the review process, to not constitute sensitive material.

(~~fb~~) (i) A determination by a local governing board described in Subsection (3) governs the availability of the given instructional material in each library, classroom, or other location where students may access the material within the public education system throughout the LEA:

—— (ii) A determination by the state board described in Subsection (4) governs the availability of the given instructional material in each library, classroom, or other location where students may access the material within the public education system throughout the state:

(~~6~~) (a) ~~An~~) Before the 2024-2025 school year, each LEA shall ensure that before a student within the LEA has any library, classroom, or other access to any instructional material that ~~meets~~ does not conform to the state board's ~~serious concern~~ rating standard described

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in Subsection (7)(b)(i), the LEA:

(i) provides prior written notice to the parent of each student who may have access to the material regarding the student's potential access to the material; and

(ii) has express written consent from the parent of any student who ~~accesses~~ may have access to the material.

~~(4)~~ (7) The state board shall:

(a) in consultation with the Office of the Attorney General, provide guidance and training to support public schools in identifying instructional materials that meet the definition of sensitive materials under this section; ~~and~~

(b) before the ~~2023-2024~~ 2024-2025 school year, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act ~~to~~:

(i) ~~establish~~ to review and adopt a rating system for age-appropriate instructional materials that ~~to~~:

~~(A)~~ includes at least language, criminal activity, self-harm, drug use, suicidal ideation, and sexual content, including sexuality and gender identity;

~~(B) identifies the rating and age at which the characteristics described in this Subsection (7)(b)(i) are of serious concern to the well-being of students; and~~

~~(ii) prevent~~ regarding the acquisition of ~~sensitive~~ instructional material by LEAs and schools in accordance with the rating system described in Subsection (7)(b)(i); and

~~(b)~~ (c) report to the Education Interim Committee and the Government Operations Interim Committee, at or before the November ~~2022~~ interim meeting each year, on implementation and compliance with this section, including:

(i) any policy the state board or an LEA adopts to implement or comply with this section;

(ii) any rule the state board makes to implement or comply with this section; and

(iii) any complaints an LEA or the state board receives regarding a violation of this section, including:

(A) action taken in response to a complaint described in this Subsection ~~(4)(b)(iii)~~ (7)(c)(iii); and

(B) if an LEA retains an instructional material for which the LEA or the state board receives a complaint, the LEA's rationale for retaining the instructional material.

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~~{ (8) (a) No less than 30 days after providing the relevant LEA or the state board a notice of claim and an opportunity to cure, a parent who triggers a review under Subsection (3) or (4) may bring an action in a court of competent jurisdiction against the relevant LEA or the state board to seek judicial review of a determination to reinstate or preserve student access to an instructional material that the parent alleges to constitute sensitive material under this section.~~

~~—— (b) If a parent prevails in an action described in this Subsection (8):~~

~~—— (i) the parent is entitled to an award in an amount equal to the greater of actual damages or \$500 per violation and an award of reasonable attorney fees and court costs; and~~

~~—— (ii) the defendant shall pay a fine of \$500 per violation to be deposited into the Crime Victim Reparations Fund created in Section 51-9-404.~~

~~—— (c) If a court determines that a parent's action before the court under this Subsection (8) is meritless or abusive, the defendant shall pay a fine of \$500 to be deposited into the Crime Victim Reparations Fund created in Section 51-9-404.~~

‡ Section 2. **Effective date.**

This bill takes effect on July 1, 2023.